APPENDIX C

Determination of Review Committee

State & County Code & Farm Serial No. 74-055-143.

Review Application No. 16 B.

Date of Filing Application for Review July 25, 1962.

Commodity Upland Cotton.

Crop Year 1961.

Chandler Company
Stockton Bldg.
Fort Stockton, Texas

To all persons who, as operator, landlord, tenant, or sharecropper, are or will be interested in the above-named commodity on the above-identified farm in the year for which the marketing quota being revised is established.

STATEMENT OF THE CASE, FINDINGS OF FACT, CONCLUSIONS, AND DETERMINATION

Statement of the Case

This case came on for hearing before the undersigned review committee, duly appointed by the Secretary of Agriculture pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended, to hear the application for review of the quota. The Hearing was conducted pursuant to Marketing Quota Review Regulations, issued by the Secretary of Agriculture under the authority of said act.

A notice of hearing to take place on the 12th day of September, 1962, at 10:00 o'clock, a.m., at Van Horn, Texas (later continued at El Paso, Texas) was duly given the applicant, and the hearing was in accordance with such notice. The applicant was present at the hearing and was represented by counsel.

There was afforded the applicant the fullest opportunity to be heard and to produce evidence and testimony bearing upon such matters and issues presented by the filing of the application as, under said regulations, the review committee is entitled to consider.

The determination being reviewed was as follows:

> The final revised allotment of zero acres for the applicant's farm concerning the 1961 cotton allotment as established by the Culberson County ASC Committee as well as the farm marketing excess found by the Committee and the crop production for the farm for 1961.

The application sets forth the following grounds:

(See Attached)

Upon the entire record of proceedings in this case, including the evidence and testimony introduced at the hearing and all exhibits filed in the case, the review committee makes the following findings of fact, conclusions, and determination:

FINDINGS OF FACT

(See Attached—Pages 1 through 12)

CONCLUSIONS

(See Attached—Page 13)

DETERMINATION

The Committee finds that all other proposed findings of fact and conclusions submitted in this case are either inconsistent with these findings or they are unnecessary to the Committee's determination of this case.

J.L.D.

The appeal is hereby denied except as to the determination of the 1961 cotton production for applicant's farm

and that is hereby determined to be the amount set out opposite the appropriate farm serial number referring to his farm in 'Findings of Fact, #22' referred to above. In all other respects the application is denied and the allotment remains 0.0 acres as set by the County Committee.

Done at El Paso, Texas, this 27th day of September 1962.

JESSE L. DAFFRON
KERMIT R. WILLIAMS
RALPH MERKLE

Certified as a true and correct copy of the signed original

OSCAR E. BOOTH
(Clerk to Review Committee)
Box 187, Sierra Blanca, Texas

October 2, 1962
Sierra Blanca, Texas

REOPENING OF THE HEARING UPON WHICH THIS DETERMINATION IS BASED

The regulations provide for reopening the hearing upon written request to the review committee by the applicant, the county committee, or other interested parties, within 15 days from the date of mailing the determination, for the purpose of taking additional evidence or of adding any relevant matter or document if the review committee finds that such evidence or document constitutes new evidence not available to the parties at the time of the hearing. In addition, the hearing may be reopened by the Secretary within 45 days from the date of mailing the determination. It will be observed therefore that a decision of a review committee does not become final until 45 days have expired after mailing the determination and the hearing has not been reopened. Until such a determination becomes final it is subject to change and the final determination made by the review committee or by the courts as set forth below

will be used in determining any penalties due in connection with the marketing quota.

INSTITUTION OF JUDICIAL PROCEEDINGS

Section 365 of the Agricultural Adjustment Act of 1938, as amended (7 U. S. Code 1365) provides that suit for judicial review of the review committee's determination may be instituted within fifteen days after notice of the determination is mailed to the applicant. Such suit may be instituted in the United States District Court or any court of record of the State having general jurisdiction, sitting in the county or the district in which the applicant's farm is located.

The application sets forth the following grounds:

1. The cotton on this farm was produced and harvested pursuant to the existence of an allotment issued by the County Committee and approved by the State Director.
2. The subsequent cancellation of this allotment and the issuance on a retroactive basis of the .0 allotment upon which the farm marketing excess is based was an arbitrary and illegal exercise of regulatory authority, making the determination of a marketing excess invalid.
3. If there did exist valid grounds for the subsequent cancellation of the allotment and the issuance of the zero allotment, the issuance of the original allotment by the County Committee and the approval by the State Director was based upon error. Accordingly, no penalty should be imposed on the cotton produced in reliance upon the issuance of the original allotment.
4. Production records produced before the County Committee established that the actual yield of the farm was less than the normal yield on the basis of which the penalty was assessed. Accordingly, the assessed penalty should be based on the actual rather than the estimated normal yield.

5. For other reasons which will be more fully developed on the hearing before the Review Committee.

FINDINGS OF FACT AND CONCLUSIONS

1. The applicant, Fred Chandler, Sr., is a lawyer, a member of the Texas Bar, and a cotton farmer. He has served a term as a member of the Texas State ASC Committee.

2. Fred Chandler, Sr. and Fred Chandler, Jr., his son, compose the partnership known as Chandler Company and were the owners of the Capitan Company, a Texas Corporation.

3. By a deed dated June 27, 1960 and recorded in the records of Culberson County, Texas, the Capitan Company acquired from Paul C. Teas, Jr., of Midland, Midland County, Texas and Laura Sue Sutherland of Dallas, Dallas County, Texas some 3,000 acres of land in Culberson County, Texas, including all of section 9, block 63, Public School Lands, and all of section 3, block 77, Public School Lands. The total purchase price was $450,000, $10,000 of which was paid in cash, $10,000 of which was evidenced by a promissory note due September 1, 1960, $15,000 of which was evidenced by a promissory note due December 1, 1960, and the balance of $415,000 was evidenced by a promissory note payable in annual installments due on December 1 of each year, the first installment being due December 1, 1961 and the remaining balance being due on December 1, 1980. The conveyance to section 9 and section 3 was made subject to the oil, gas and other minerals reserved to the State of Texas in the patents to said lands. By deed dated January 19, 1961, the applicants, Fred C. Chandler, Sr., and Fred C. Chandler, Jr., acquired from Paul C. Teas of Dallas County, Texas, Survey No. 40, block 64, township 7, T & P Ry Co. Survey, Culberson County, Texas. The deed was recorded in the records of

Culberson County. The total purchase price was $22,274, $5,000 of which was paid in cash and the balance was evidenced by a promissory note dated January 19, 1961, for $17,274.00 payable in 10 equal annual installments. The deed conveyed only the surface together with an undivided one-half non participating oil and gas royalty interest.

4. In November 1960 the Chandlers entered into an unrecorded agreeemnt with Paul C. Teas, Jr., and Laura Sutherland under which the note for $415,000 was surrendered and two notes, one for $35,000 and one for $380,000 were executed. The note for $35,000 was intended to reflect the unpaid purchase price on section 9 and the east part of section 3 and upon the payment of that amount the lien on that land was to be released. This agreement which was made on or about November 14, 1960, provided that the Chandlers were to be privileged to pay the full amount on December 1, 1961. Later, on or about November 2, 1961, this agreement was modified to permit the Chandlers to pay one-half of the $35,000 on December 1, 1961 and the balance on December 1, 1962 if they wished to do so.

5. On January 30, 1961, the charter of the Capitan Company was forfeited as of July 16, 1960, because of delinquent franchise taxes. On April 25, 1961, Capitan Company conveyed all its property to Fred Chandler, Sr., and Fred Chandler, Jr., doing business as Chandler Company in consideration of Chandler Company assuming all the liabilities of Capitan Company. Some time in the early part of 1960, but prior to April, at the suggestion of his foreman, James Bennett, Fred Chandler, Sr., telephoned a Mr. Crabtree in Custer County, Oklahoma. Fred Chandler, Sr., later met Crabtree in El Paso and discussed the possibility of selling land in Culberson County, Texas, to farmers in Custer County, Oklahoma, who had lost their farms through eminent domain

proceedings and were therefore eligible to move the cotton allotment on such Oklahoma farms to Texas farms if acquired by such displaced owners. Fred Chandler, Sr., also discussed the matter with a Dr. Maddox in El Paso in April 1960, and saw a copy of a contract Dr. Maddox was using for that purpose.

6. Fred Chandler, Sr., went to Clinton, Custer County, Oklahoma, in the summer of 1960, after calling Harvey White on the phone at the suggestion of Crabtree and Dr. Maddox. On arrival in Clinton, Chandler met White and arranged for him to contact displaced owners and have them meet with Chandler. White was the Performance Supervisor in the Custer County ASCS office and worked under the supervision of Russell Dill, the County Office Manager of the Custer County ASCS office. Chandler made a similar arrangement with Dill. Both White and Dill were active in assisting Chandler in his negotiations with displaced owners. On May 20, 1961, White and Dill were paid $1,765 each by Chandler. This represented approximately $5.00 per acre to each, or $10.00 to both for each acre of cotton allotment which was transferred from Oklahoma to the Chandler Company and Capitan Company land in Culberson County, Texas. This money was returned by White and Dill after an investigation by the United States Department of Agriculture. Dill, as a part of his official duties, was required to interview displaced owners in Custer County relative to their acquisition of land in connection with their applications for the transfer of allotments to their credit in the eminent domain pool. The applicant, Hubert Kephart, was among those interviewed by Dill.

7. Chandler made several trips to Custer County, Oklahoma in the fall of 1960, and negotiated with various farmers who had allotments in the eminent domain pool. Finally, in the latter part of 1960 or the early part of 1961 it was agreed by Fred Chandler, Sr., and the appli-

cants in these proceedings, other than Fred Chandler, Sr., and Fred Chandler, Jr., that the Chandlers would cause a deed to be executed to each applicant covering enough acreage in Culberson County owned or controlled by the Chandlers to give sufficient cropland to support the transfer of the cotton allotment acreage each applicant had in the eminent domain pool. Each deed was to contain a provision under which the grantee assumed an amount of the indebtedness against the land equal to $35.00 for each acre conveyed and also assumed the payment of $20.00 per acre for clearing costs. As part of this transaction it was agreed that the applicants would lease the land conveyed by the deeds to the Chandlers for a period of 20 years and that the rental would be the equivalent of $100.00 per acre for each cotton allotment acre transferred to the land except that in the case of Vernon Fletcher the price was $103.26 per acre and in the case of Hubert Kephart it was $125.00 per acre. A tabulation showing the farm number that was assigned to each tract so conveyed, the name of the purchaser, the date of the deed, the date of the lease, cropland acreage, and allotment acreage is set forth in applicants' Exhibit 6. Fred Chandler, Sr., prepared the deeds and selected the tracts which were to be deeded to each purchaser. None of the purchasers saw the land until a day or two before February 17, 1961. A part of the expenses of the first trip to view the land was paid by Chandler Company. The original deed to A. N. Easley was executed by the Chandlers, although title was in the Capitan Company and the deed to Hubert Kephart described the assumption of a lien to Paul Teas, Jr., of Midland County, Texas, whereas the lien was actually held by Paul Teas, Sr., of Dallas County, Texas. There were errors in five other deeds, and in all, seven correction deeds were executed. Copies of the original deeds and the correction deeds have been made a part of the record. The deeds were statutory

warranty deeds and purported to convey full fee simple title although the grantors did not own all the minerals.

8. The deeds were recorded by Fred Chandler, Sr.

9. The grantees in the deeds made no inquiry as to the title to the land from anyone other than Fred Chandler, Sr., and had no independent title examination made.

10. Prior to November 1961, there was no agreement between the grantees and the Chandlers as to when and how the purchase price of $35.00 per acre was to be paid and there is not now any agreement as to when and how the $20.00 per acre clearing costs are to be paid.

11. There was an oral agreement between the Chandlers and the grantees in the deed that if an irrigation well was drilled on any tract conveyed, the grantee of that tract would deed back one acre of land on which the well was located for $75.00.

12. The grantees in the deeds had no agreement with the prior lienholders that upon payment of the amount of the lien set out in the assumption clause of the deed that the lien as to the tract covered by the deed would be released.

13. Payments were made by the Chandlers on the rentals provided for in the leases at the times and in the amounts shown by applicants' Exhibit 9, except that the payment on March 24, 1961, to L. M. Stout should be $621.00 and the payment of $1,150.00 shown to L. M. Stout on November 29, 1961, is in error. The initial payments shown as being made on February 14, 1961 were in the nature of earnest payments and were to be retained by the recipients even though the allotment transfers were not approved. The original lease to Hubert Kephart was amended but in each lease the rental was fixed at $7,840, even though the total amount paid Kephart was $9,800.

Each lease provided that the Chandlers would pay the taxes on the land covered by the leases.

14. On February 17, 1961, the following applicants appeared before the Culberson County ASC Committee and filed a Form CSS-178:

Vernon McLaughlin
Woodrow Gum
A. N. Easley
L. M. Stout
Jack D. Warner
A. H. Crawford
Hubert Kephart
J. R. Kenney

On May 22, 1961, the following displaced owners appeared at the Culberson County ASC Committee and filed Form CSS-178:

Cecil E. Brown
Lewis Kenney
J. R. Kenney

Vernon Fletcher, Jack Kenney, and Paul Kenney did not appear before the County Committee but filed affidavits requesting that the personal appearance requirement be waived because of illness and each submitted a duly executed Form CSS-178. The Committee approved CSS-178 for Vernon Fletcher on May 5, 1961, for Jack Kenney on May 22, 1961, and for Paul Kenney on July 13, 1961. The applicants, at the time of their appearance before the county committee, or the submission of the Form CSS-178 by Vernon Fletcher, Jack Kenney and Paul Kenney, failed to present all the facts relevant and material to the County Committee in making determination of the transactions in question. Namely, they did not make known to the Committee the following facts:

a. The seller paid approximately $10.00 per acre of pooled cotton allottment to Mr. Harvey White, then

performance supervisor, Custer County Oklahoma ASCS Office and Mr. Russell E. Dill, then County Office Manager, Custer County Oklahoma ASCS Office, to render assistance in obtaining pooled cotton allotments from displaced owners in Custer County, Okahoma.

b. The displaced owners leased the farms to the seller for a 20-year term and the seller paid one-half of the rental for the 20-year term by March 1, 1961, and agreed to pay the second installment by March 1, 1962, except that in the case of L. M. Stout the entire rental was paid in 1961 and in the case of Vernon McLaughlin all the rental was to be paid in 1962.

c. Under the leases, the seller agreed to pay taxes on the land in most cases.

d. The parties had no agreement as to when the land clearing and development costs of $20.00 per acre be paid to the seller.

e. The parties had no agreement as to when the assumed purchase price would be paid to the lien holder.

f. The deeds did not make any reservation of mineral rights although the seller did not own all the mineral rights.

g. The displaced owners had no agreement with the prior lien holders to release such liens upon payment of the purchase price as to the individual tracts allegedly bought by them.

h. The displaced owners had an oral agreement to deed an acre of land back to the seller for $75.00 in the event a well was located on the tract of land allegedly sold to any of the parties.

i. The seller paid earnest money to some of the displaced owners before they visited the Texas land.

The Committee finds that these statements of fact have been established and proven.

15. In the summer of 1961 Fred Chandler, Sr., and many of the Oklahoma applicants were interviewed by investigators for the United States Department of Agriculture concerning the transactions which are the subject matter of these appeals. Thereafter, Fred Chandler, Sr., went to Custer County and met with most of the applicants. Chandler prepared and presented a schedule of payments to be made by the applicants. These payments were equal to 1/10 of the purchase price, exclusive of clearing costs, plus interest, in the case of the tracts in section 40 and one-half of the purchase price, exclusive of clearing costs, plus interest, in the case of tracts in sections 9 and 3. Installments were due on the first lien on sections 9 and 3 on December 1, 1961, and on section 40 on January 19, 1962. The final payments on the lease money as shown by Exhibit 9 were not due until March 15, 1962. As a result of these negotiations the following payments have been made:

(a) On December 1, 1961, Chandler Company paid Paul Tease, Jr., and L. S. Sutherland $566.21 on behalf of Jack Kenney. Thereafter on March 1, 1962, Chandler Company paid Jack Kenney the balance of the lease money in the sum of $500.00 without deduction.

(b) On December 1, 1961, Chandler Company paid $566.21 to Paul Teas, Jr., and L. S. Sutherland for Paul Kenney. On March 13, 1962, Chandler Company paid Paul Kenney $500.00 as a balance of the lease money without deduction.

(c) On December 1, 1961, Chandler Company paid $566.21 to Paul Teas, Jr., and L. S. Sutherland for Vance Kenney and on either March 13, 1962, or August 13, 1962, paid Vance Kenney $500.00 as the balance of the lease money without deduction.

(d) On December 1, 1961, Chandler Company paid $566.21 for L. M. Stout to Paul Teas, Jr., and L. S. Sutherland and has made no effort to collect from Stout.

(e) On December 1, 1961, Cecil Brown paid Paul Teas, Jr., and L. S. Sutherland $566.21, and on November 29, 1961 was paid $635.00 by Chandler Company as the balance due on the rent.

(f) On December 1, 1961, A. N. Easley paid Paul Teas, Jr., and L. S. Sutherland $566.21, and on November 29, 1961, A. N. Easley was paid $1,610.00 by Chandler Company as the balance due on the rent.

(g) On December 1, 1961, A. H. Crawford paid Paul Teas, Jr., and L. S. Sutherland $1,132.32, and on November 29, 1961, A. H. Crawford was paid $1,150 by Chandler Company as the balance due on the rent.

(h) On December 1, 1961, J. R. Kenney paid Paul Teas, Jr., and L. S. Sutherland $206.64 and on the same date J. R. Kenney paid Paul Teas, Jr. and L. S. Sutherland $2,264.85. On March 13, 1962, Chandler Company paid J. R. Kenney a total of $2,845.00 the balance due on rent money.

(i) On December 1, 1961, Vernon McLaughlin paid Paul Teas, Jr., and L. S. Sutherland $2,264.85. On March 13, 1962, Chandler Company paid Vernon McLaughlin $3,942.00 as balance due on rent money.

(j) On December 1, 1961, Woodrow Gum paid Paul Teas, Sr., $232.42. On November 29, 1961, Chandler Company paid Woodrow Gum $755.00 balance due on rent money.

(k) On December 1, 1961 (Seller's Certification obviously in error as it has date of 12-1-62), Jack D. Warner paid Paul Teas, Sr., $232.47. On November 29, 1961, Chandler Company paid Jack Warner $840.00 balance due on rent payments.

(l) On December 1, 1961, Vernon Fletcher paid Paul Teas, Sr., $232.47. On March 13, 1962, Vernon Fletcher was paid $787.50 by Chandler Company as balance due on rent payments.

(m) On December 1, 1961, Hubert Kephart paid Paul Teas, Sr., $1,084.86. On March 13, 1962, Chandler Company paid Hubert Kephart $6,000.

(n) On December 1, 1961, Lewis Kenney paid Paul Teas, Sr., $206.64. On March 13, 1962, Chandler Company paid Lewis Kenney $500.00 balance due on rent.

(o) On December 1, 1961, Walter S. Kenney paid Paul Teas, Sr., $203.54. On March 13, 1962, Chandler Company paid Walter S. Kenney $500.00 balance due on rent.

16. On April 25, 1962, Hubert Kephart and Fred Chandler, Sr., appeared before the Texas State ASC Committee and Kephart was asked the following question by Mr. Pool, a member of the State Committee: Question: "Well, then, the deed that you got was it a clear title to it, do you have a clear title to it now—you wouldn't have to pay a dime if you didn't want to?" To which Kephart answered: "Actually I would not. As far as I'm concerned I won't have to pay anybody a nickle for it because I do have a clear deed to it."

17. Based on the facts and circumstances set forth above, the Committee finds that at the time the applicants made application to the Culberson County Committee to transfer the cotton allotments from the eminent domain pool the applicants and the Chandlers had an understanding to the effect that the applicants were not obligated to pay for the land covered by the deeds in question and were privileged to retain the money ostensibly paid under the leases and that the Chandlers would keep up the required payments on the first liens. That this understanding when coupled with the facts heretofore found constituted a side

agreement by the applicant for the purpose of obtaining an allotment from the allotment pool for a person other than himself.

18. The transactions by which the applicants obtained deeds to the farms in question were not for the purpose of reestablishing the farming operations of the applicants as displaced owners but were schemes and devices to sell the allotments and to transfer the allotments for the benefit of Fred Chandler, Sr., and Fred Chandler, Jr.

19. The certification by each applicant on Form CSS-178 that he had made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself, and the withholding of the information as set out in finding 14, constituted misrepresentations by each applicant under which the transfer of the allotments was obtained.

20. The Culberson County ASC Committee met on April 26, 1962, to consider revision of 1961 farm allotments for farms to which pooled cotton allotment had previously been transferred effective for the 1961 crop of upland cotton. The minutes of the meeting show that the county committee determined that the transfers of pooled cotton allotments must be cancelled for the reason that investigation by the Department of Agriculture disclosed that there were irregularities in certifications that no side agreements existed and that failure to furnish all documents and side agreements, oral or written, was a misrepresentation of the facts when coupled with the certifications on Form CSS-178 that there were no side agreements for the purpose of obtaining an allotment for a person other than the applicant (displaced owner).

In accordance with such determination the county committee issued revised notices of zero upland cotton allotment for 1961. Each notice on Form MQ-24-1 was dated April 27, 1962 and mailed to the Capitan Company, c/o

Chandler Company as farm operator and included a typed statement as follows:

> "It has been determined that the transfer of pooled upland cotton allotment acres to this farm does not meet the requirements of Section 719.12 of the Farm Constitition and Allotment Record Regulations."

Such revised notices related to the following farms:

Farm No.	Farm Owner
127	J. R. Kenney
128	Vernon McLaughlin
129	Woodrow Gum
130	A. N. Easley
131	L. M. Stout
132	Cecil E. Brown
133	Jack D. Warner
134	Vernon Fletcher
135	A. H. Crawford
136	Hubert Kephart
138	Lewis Kenney
139	Jack Kenney
140	J. R. Kenney
141	Walter S. Kenney
142	Paul Kenney
143	Vance Kenney

21. The county committee by letter dated February 9, 1962 furnished to Chandler Company a form entitled "Seller's Certification of Bona Fide Sale of Land" which was completed and executed by Fred Chandler, Sr., Partner, Chandler Company. The county committee by letter dated April 26, 1962 requested Chandler Company to complete and file with the committee the same Seller's Certification together with copies of complete contractual arrangements in effect between the buyer and the seller of the land at the time the transfer of allotment was approved by the State and County offices.

The Seller's Certifications and related contractual documents furnished by Chandler Company were reviewed by the Department of Agriculture and it was determined that such certifications should be disapproved. Chandler Company was duly notified of this action.

22. The county committee issued to Chandler Company Forms MQ-93, dated June 1, 1962 for each farm which established the farm marketing excess and amount of penalty due for upland cotton of the 1961 crop. The county committee considered applications for downward adjustment on the basis of evidence of actual production of 1961 cotton on these farms and rejected these applications by issuing to Chandler Company Forms MQ-93 dated July 16, 1962 for each farm.

The production records of Chandler Company which were placed in evidence are satisfactory and support the applications for downward adjustment. The following production in pounds of 1961 cotton is accepted by the committee:

Farm No.	1961 cotton production (pounds)	
127	30,192	
128	21,936	
129	6,193	
130	19,148	
131	2,634	
132	5,348	
133	6,789	
134	4,894	
135	12,844	
136	36,087	
138	3,682	
139	8,205	
140	4,611	
141	3,637	
142	8,560	(Normal yield less than actual).
143	7,397	

23. The stand dates for the 1961 crop of cotton shown by Applicants' Exhibit No. 29 are admitted to be 7 days after seeding of the 1961 crop. The following table shows the farm number, seeding date, date of mailing the original notice of 1961 farm allotment and size of allotment.

Farm No.	1961 Seeding Date	Date of Mailing Original Notice of 1961 Allotment	Size of Original 1961 Allotment (acres)
127	5-17-61	5-4-61	46.9
128	33.1 acres 5-17-61 10.7 acres 5-27-61	5-4-61	43.8
129	5-20-61	5-4-61	15.1
130	6.3 acres 5-27-61 25 acres 5-29-61	5-4-61	32.2
131	6-3-61	5-4-61	6.9
132	6-3-61	7-5-61	12.7
133	5-20-61	5-4-61	16.8
134	5-29-61	6-23-61	15.2
135	5-27-61	5-4-61	23.0
136	20 acres 5-13-61 50 acres 5-17-61 8 acres 5-27-61	5-4-61	78.4
138	6-3-61	7-5-61	10.0
139	5-7-61	7-5-61	10.0
140	5-20-61	7-5-61	10.0
141	6-3-61	7-5-61	10.0
142	5-7-61	7-31-61	10.0
143	5-7-61	7-5-61	10.0

24. On August 17, 1962 the Culberson County ASC Committee mailed to Chandler Company a Notice of Acreage, Form ASCS-590 and applicants have filed an appeal with respect thereto.

Conclusion

1. Under section 711.12 of the Marketing Quota Review Regulations (26 F.R. 10204), the review committee can consider only such matters as under applicable provisions of the Act and regulations of the Secretary are required or permitted to be considered by the county committee in the establishment of the quotas sought to be reviewed.

2. The committee is required to apply the provisions of section 719.12(d)(2) (26 F.R. 1396) of the Farm Constitution and Allotment Record Regulations to the facts determined from the evidence presented in these appeals.

3. The 1961 upland cotton allotment for each of the farms involved in this appeal was properly reduced to zero.

4. The farm marketing excess for 1961 for each farm should be the amount of cotton set forth in finding No. 22.

5. The erroneous notice of allotment provision in section 722.433(a) of the 1961 upland cotton acreage allotment regulations is not applicable to any of the farms because in each case the sole producer, Chandler Company, under a cash lease for each farm did not plant solely in reliance on the erroneous notice of allotment since (a) in all cases the producer as seller of the farms knew that a misrepresentation of the facts had been made to the county committee and (b) in the case of farms 132, 134, 138, 139, 140, 141, 142, and 143 the 1961 cotton crop was seeded prior to the date of mailing the original notice of 1961 farm allotment.

6. The notice of acreage mailed on August 17, 1962 was not a notice of an acreage allotment and farm marketing quota within the meaning of section 362 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1362), and is not reviewable by this committee under the provisions of section 363 of said Act (7 U.S.C. 1362).

FINDINGS OF FACT, CONCLUSIONS AND DETERMINATION OF DISSENTING REVIEW COMMITTEE MEMBER RALPH MERKLE

Findings of Fact

1. Fred Chandler, Sr., and Fred Chandler, Jr., are residents of the State of Texas and are jointly engaged in the business of cotton farming as sole partners in a partnership known as Chandler Co., which partnership is the successor of a new defunct Texas corporation which was owned and controlled by the said Fred Chandler, Sr., and Fred Chandler, Jr., and was known as Capitan Co. Fred Chandler, Sr., Fred Chandler, Jr., Chandler Co. and Capitan Co. shall be deemed one and the same for the purposes of this proceeding. (Tr. 75-76, 94.)

2. On the following dates, the named individuals, hereinafter referred to as the displaced farmers, were displaced from lands in Oklahoma bearing cotton allotments by the Bureau of Reclamation of the United States Department of Interior, an agency of the United States having the power of eminent domain:

Cecil Brown	6-15-58	
A. H. Crawford	7-22-60	
A. N. Easley	7-21-60	
Vernon Fletcher	1-12-61	
Woodrow Gum	4- 7-60	
J. R. Kenney	8-21-58	(46.9 acre allotment)
J. R. Kenney	12-31-58	(10.0 acre allotment)
Lewis Kenney	12-31-58	
W. S. Kenney	12-31-58	
Jack Kenney	12-31-58	
Paul Kenney	12-31-58	
Vance Kenney	12-31-58	
Vernon McLaughlin	12-13-60	
L. M. Stout	12-31-60	
Jack Warner	12-31-60	
Hubert Kephart	12-22-60	

(Tr. 416, 424.)

3. The displaced farmers were advised by various officials of the Bureau of Reclamation and the Department of Agriculture of their statutory right to transfer the cotton allotments formerly assigned to their Oklahoma land to an allotment pool and within three years of the date of displacement from said pool to other lands owned by them. (Tr. 424-425.)

4. The displaced farmers made extensive searches for other lands to which they could transfer their allotment but were unable to find other lands. (Tr. 446-447.)

5. In the summer of 1960, Fred Chandler, Sr. learned of the existence of displaced Oklahoma farmers who were seeking land to which they could attach their allotments. (Tr. 92.)

6. In order to contact these displaced Oklahoma farmers, Fred Chandler, Sr. sought the assistance of Harvey White and Russell Dill, employees of the Custer County, Oklahoma, ASCS Committee, to seek and arrange meetings between Mr. Cahndler and such displaced Oklahoma farmers. (Tr. 97, 98, 100.)

7. Neither Harvey White nor Russell Dill nor the Custer County ASCS Committee was in a position to exercise discretionary influence over the transfer of cotton allotments from Oklahoma to Texas. (Tr. 107, 139.)

8. Mr. Chandler paid Harvey White and Russell Dill the sum of $1,765.00 each for their services in locating purchasers of his land. These sums were later returned to Mr. Chandler. (Tr. 102-106.)

9. At one or more of several meetings with the displaced farmers Mr. Chandler agreed to sell and convey to each of them a tract of land suitable for farming in Culberson County, Texas, for an agreed price of $55.00 per acre. It was agreed that $35.00 per acre of such amount would be paid by assumption and payment by each purchaser of

a $35.00 per acredindebtedness [sic] then owed to others by the Chandlers and secured by vendor's lien and deed of trust lien covering such tract and other land. Mr. Chandler agreed to clear such land suitably for farming, and the Oklahoma purchasers agreed to pay to Mr. Chandler the balance of $20.00 per acre (the estimated cost of such land clearing) upon demand after clearing of all of the land. It was further agreed that upon consummation of the conveyances Mr. Chandler would lease such tracts of land from the respective Oklahoma Purchasers for farming purposes for a term of 20 years for an advance rental equivalent to $100.00 per cotton allotment acre to be transferred to the land, except that in the case of Hubert Kephart, it was agreed that the lease rental would be equivalent to $125.00 per acre of such cotton allotment. (Tr. 113-115, 119.)

10. It was orally understood that during the lease term Mr. Chandler would drill irrigation wells to produce water with which to irrigate the farms, and that, in the case of any producing wells drilled on the Oklahoma farms, the owner would sell and convey to Mr. Chandler the one acre of land on which the producing well was located at a price of $75 per acre.

11. Mr. Chandler explained to the displaced farmers that the land which they were purchasing was subject to a recorded prior lien covering such land plus other tracts of land and that payments would be made in compliance with the requirements of that prior lien. Mr. Chandler was to notify the individual purchasers of the amount of payment and date of payment. (Tr. 113, 115.)

12. Mr. Chandler agreed to pay the lease rent in advance to those who requested it. (Tr. 127.)

13. During the course of these negotiations, no agreement was made that Mr. Chandler would at any time re-

purchase the land to be sold to the Oklahoma farmers. (Tr. 137-139, 417, 426.)

14. Pursuant to the agreement so reached, the displaced farmers purchased by warranty deeds, executed, and recorded as follows, land in Culberson County, Texas:

Purchaser	Date Executed	Filed for Record
J. R. Kenney	1-25-61	5-24-61
V. McLaughlin	1-28-61	2-13-61
W. Gum	2-11-61	2-13-61
A. N. Easley	1-28-61	4- 6-61
L. M. Stout	1-28-61	2-13-61
C. Brown	1-28-61	2-13-61
J. D. Warner	2-11-61	2-13-61
V. Fletcher	2-11-61	2-13-61
A. H. Crawford	1-28-61	2-13-61
H. Kephart	1-28-61	2-13-61
L. Kenney	1-25-61	4- 6-61
Jack Kenney	1-28-61	4- 6-61
J. R. Kenney	1-28-61	2-13-61
W. S. Kenney	1-25-61	4- 6-61
J. P. Kenney	1-27-61	4- 6-61
V. Kenney	1-28-61	4- 6-61

(Tr. 125, Applicants' Exhibit 4.)

15. The deeds did not reserve a specific vendors' lien or contain any provision which would allow the land to revert automatically to Mr. Chandler under any condition. (Tr. 125, Applicants' Exhibit 4.)

16. The deeds made no specific reservation of mineral or water rights and conveyed to the purchaser any and all mineral and water rights owned by Mr. Chandler. The evidence does not establish that there was any agreement or understanding that the Chandlers would repurchase the land, or that the land would be permitted to revert to the Chandlers through foreclosure proceedings, following nonpayment of the purchase price. The evidence establishes

to the contrary that the Chandlers could have provided for foreclosure if they had reserved a vendor's lien in the deed, but that they failed to do so, and that in the absence of a vendor's lien the only manner in which the Chandlers could regain ownership of the land would be to make demand for payment of any unpaid purchase price, reduce any unpaid portion of the purchase price to judgment, and then enforce the judgment by filing a bill in equity to sell the land at a sheriff's sale at which the Chandlers would be required to bid for the land, at its then current value against all bidders, and any excess would go not to the Chandlers, but to the Oklahoma farmers. (Tr. 125, 479, Applicants' Exhibit 4)

17. No notes or deeds of trust were executed in Mr. Chandler's behalf. (Tr. 261.)

18. The land conveyed by said deeds was of economical and efficient dimensions and was grouped in such manner as to allow the purchasers to combine their farms should they desire to do so. (Tr. 131-133, 294; Applicants' Exhibit 7.)

19. In several instances deeds of correction were required to correct errors in property description and execution as follows:

Purchaser	Deed Executed	Filed For Record
W. Gum	5-20-61	5-25-61
J. D. Warner	5-20-61	5-24-61
V. Fletcher	5-20-61	5-24-61
H. Kephart	5-20-61	5-24-61
L. Kenney	5-20-61	5-24-61

(Tr. 123-125; Applicants' Exhibit 4.)

20. The displaced farmers filed or caused to be filed Forms CSS-177 requesting the transfer of the allotments assigned to their Oklahoma lands to an allotment pool.

21. Shortly following the execution of the original deeds, the displaced farmers granted leases of 20-year tenancy to Mr. Chandler:

Lessor	Lease Date
Cecil Brown	2-1-61
A. H. Crawford	2-1-61
J. R. Kenney	2-1-61
Jack Kenney	2-1-61
Lewis Kenney	2-1-61
Paul Kenney	2-1-61
Walter Kenney	2-1-61
Vance Kenney	2-1-61
Hubert Kephart	2-1-61
Vernon McLaughlin	2-1-61
L. M. Stout	2-1-61
Vernon Fletcher	3-15-61
A. N. Easley	3-21-61
Woodrow Gum	Not Dated
Jack Warner	Not Dated

(Tr. 126; Applicants' Exhibit 5.)

22. The displaced farmers, pursuing what they believe to be their statutory rights, made application to the Culberson County ASCS Committee for transfer of the acreage allotments previously validly subsisting on their condemned Oklahoma lands from an allotment pool to their Culberson County, Texas, lands. (Comm. Exhibits 2-17, Forms CSS-178.)

23. On February 17, 1961, the following displaced farmers appeared before the Culberson County ASCS Committee:

J. R. Kenney, Vernon McLaughlin, Woodrow Gum, Arthur Easley, L. M. Stout, Jack Warner, A. H. Crawford and Hubert Kephart. (Tr. 140, 418; Applicants' Exhibit 10.)

24. On May 22, 1961, the following displaced farmers appeared before the Culberson County ASCS Committee: Cecil Brown, Lewis Kenney, J. R. Kenney, W. S. Kenney, and Vance Kenney. (Tr. 152-153; Applicants' Exhibit 12.)

25. The following displaced farmers appeared before the Culberson County ASCS Committee by affidavit on the dates indicated: Jack Kenney, May 22, 1961; Vernon Fletcher, June 23, 1961; and J. P. Kenney, July 13, 1961. (Comm. Exhibits 2-17, Affidavits.)

26. In their appearances before, or in their affidavits to, the Culberson County ASCS Committee, the displaced farmers made a complete, accurate and cooperative account of all information requested of them and produced all documents requested of them by the Committee and no misrepresentation of fact was made by or on behalf of the Oklahoma farmers or by or on behalf of Mr. Chandler. (Tr. 142-146, 153-155, 418, 427.)

27. No explanation was given to Mr. Chandler or the displaced farmers as to the meaning of the terms "scheme or device," "side agreement," or "for the benefit of a person other than the displaced owner," or as to any information which should be furnished to the Committee in order to enable it to ascertain whether the proposed transfer met these criteria. (Tr. 332-353, 359-362, 374-376.)

28. There is no evidence to establish that either the displaced farmers or Mr. Chandler knowingly withheld any information, facts or circumstances from the Committee, or that they knowingly withheld from or failed to furnish to the Committee any information, facts or circumstances which they had any reason to believe were material to the transfer.

29. The Culberson County ASCS Committee approved the CSS-178 applications as follows:

Applicant	ASCS Farm Number	Date Approved
Hubert Kephart	136	2-17-61
Woodrow Gum	129	2-17-61
A. N. Easley	130	2-17-61
A. H. Crawford	135	2-17-61
J. R. Kenney	127	2-17-61
Vernon McLaughlin	128	2-17-61
L. M. Stout	131	2-17-61
Vernon Fletcher	134	5- 4-61
W. S. Kenney	141	5-22-61
Vance Kenney	143	5-22-61
Cecil Brown	132	5-22-61
Lewis Kenney	138	5-22-61
Jack Kenney	139	5-22-61
J. R. Kenney	140	5-22-61
Paul Kenney	142	7-13-61

(Tr. 141-142, 148-150, 153-154.)

30. Thereafter, the Texas State ASCS Office approved the action of the Culberson County ASCS Committee in transferring the said allotments as follows:

Applicant	ASCS Farm Number	Date Approved
Hubert Kephart	136	4-28-61
Woodrow Gum	129	4-28-61
A. N. Easley	130	4-28-61
L. M. Stout	131	4-28-61
A. H. Crawford	135	4-28-61
J. R. Kenney	127	4-28-61
Vernon McLaughlin	128	4-28-61
Vernon Fletcher	134	6-19-61
W. S. Kenney	141	6-27-61
Vance Kenney	143	6-27-61
Cecil Brown	132	6-27-61
Lewis Kenney	138	6-27-61
Jack Kenney	139	6-27-61
J. R. Kenney	140	6-27-61
Paul Kenney	142	7-28-61

(Applicants' Exhibits 2-17, Forms CSS-178, Part III.)

31. Fred Chandler, Sr., and Fred Chandler, Jr., as lessee-operators of the said farms, in reliance upon the 1961 allotments planted, harvested, and either marketed or placed under government loan a 1961 cotton crop produced upon the said land. (Tr. 207-211.)

32. On February 9, 1962, the Culberson County ASCS Committee, at the direction of the Department of Agriculture, requested Mr. Chandler to complete and file with the Committee three copies of a "Seller's Certification of Bonafide Sale of Land" respecting each of the 16 farms sold to the displaced farmers. (Tr. 166-167.)

33. On March 9, 1962, Mr. Chandler executed the Seller's Certifications. In so doing Mr. Chandler certified that the first payment had been made in the manner shown on the certifications, the payments being made by the purchasers except in four cases noted on the certification in which Mr. Chandler made the payment at the request of the pur-

chaser; that he entered into no side agreement with the purchasers for the return of the purchase price; that he did not pay or arrange for the financing of the purchasers' payments (except in four instances noted on the certifications); and that the purchaser is personally liable for completing his payments. In all respects the information so certified was accurate and complete. (Tr. 168-172.)

34. Payments made by the displaced farmers to first lien holders, Paul C. Teas, Jr. and Laura Sue Sutherland, and recited in the above Seller's Certificates were as follows :

J. R. Kenney to L. S. Sutherland, $1,132.43, November 30, 1961

A. H. Crawford to Paul Teas, $566.21, December 1, 1961

A. H. Crawford to L. S. Sutherland, $566.21, December 1, 1961

Cecil Brown to Paul Teas, $283.10, November 30, 1961

Cecil Brown to L. S. Sutherland, $283.10, November 30, 1961

J. D. Warner to Paul Teas, $232.47, November 30, 1961

Woodrow Gum to Paul Teas, $232.47, November 30, 1961

J. R. Kenney to Paul Teas, $206.64, November 30, 1961

Vernon Fletcher to Paul Teas, $232.47, November 30, 1961

Hubert Kephart to Paul Teas, $1,084.86, November 29, 1961

J. R. Kenney to Paul Teas, $1,132.43, November 30, 1961

Vernon McLaughlin to Paul Teas, $1,132.43, December 1, 1961

Vernon McLaughlin to L. S. Sutherland, $1,132.43, December 1, 1961

A. N. Easley to L. S. Sutherland, $849.32, November 30, 1961

A. N. Easley to Paul Teas, $849.32, November 30, 1961

Lewis Kenney to Paul Teas, $206.64, December 1, 1961

W. S. Kenney to Paul Teas, $203.54, December 1, 1961

(Applicants' Exhibit 16, Tr. 172.)

35. Four of the displaced farmers were unable to make their first year's payments and requested Mr. Chandler to make such payments for them. Accordingly, Mr. Chandler made and credited to the appropriate account receivable the following payments, each of which was accurately reported on the appropriate "Seller's Certification of Bona Fide Sale of Land":

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for L. M. Stout

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for L. M. Stout

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for Jack Kenney

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for Jack Kenney

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for Paul Kenney

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for Paul Kenney

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for Vance Kenney

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for Vance Kenney

(Tr. 175, Applicants' Exhibit 16.)

36. Thereafter, on or about March 20, 1962, in response to a request by Mr. Chandler, as lessee-operator, the Cul-

berson County ASCS Committee combined into one reconstituted farm, the farms owned by the displaced farmers and other lands and operated by the Chandlers. (Tr. 201-205, 207, 291-292.)

37. On or about April 26, 1962, the Culberson County ASCS Committee, at the direction of the Administrator, ASCS, entered in its minutes a finding that investigation disclosed irregularities in the certification that no side agreements existed relating to the sale and leaseback of the land involved, and that it had been concluded that failure to furnish all documents and side agreements (oral or written) was a misrepresentation of the facts when coupled with the applicants' certifications on Form CSS-178 that there were no side agreements for the purpose of obtaining an allotment for a person other than the applicant. (Applicant's Exhibit 19-A, Tr. p. 192, 193.)

38. This finding and conclusion was entered in the minutes of the Committee solely at the direction of the Administrator, ASCS, or of others, and was not the result of independent decision by the Culberson County ASCS Committee. Nevertheless, the Committee, on or about April 27, 1962, pursuant to such determination, cancelled the allotments which had theretofore been issued for the crop year 1961, and issued zero allotments in lieu thereof. (Committee Exhibits 2-17, Forms MQ-24-1 mailed 4-27-61, Tr. pp. 192-193, 353-357.)

39. By stipulation of the parties herein, Mr. Chandler's appeals from this order are on behalf of the displaced farmers, as well as his own, and by virtue of such stipulation the displaced farmers are parties herein. (Tr. 3-4.)

40. On April 12, 1962, the Culberson County ASCS Committee executed Notices of Farm Acreage Allotment and Marketing Quota which provided no 1962 acreage allotment for the disputed acreage portion of the reconstituted farm. (Tr. 203-205, Applicants' Exhibits 22-1, 22-2.)

41. Believing that the 1962 allotment for such disputed acreage was still under consideration and that the notice of April 12 did not represent a final determination. Mr. Chandler filed no appeal from such notice. (Tr. 205-206.)

42. On April 26, 1962, the Culberson County ASCS Committee, at the direction of the Texas State ASCS Office and/or the United States Department of Agriculture, informed Mr. Chandler that unless he filed the Seller's Certifications above referred to, together with all pertinent documents, the cancelled 1961 allotments for the Culberson County farms purchased by the displaced farmers would receive no further consideration and the 1962 allotment for such acreage would be affected accordingly. (Tr. 186-188.)

43. On May 3, 1962, Mr. Chandler furnished the requested Seller's Certifications, together with copies of the relevant deeds, leases, and first annual payment checks involved in the transactions. (Tr. 188-194, Applicants' Exhibit 19a.)

44. On or about May 4, 1962, Fred Chandler, Sr., and Fred Chandler, Jr., filed timely appeals from such notices requesting review by a statutory review committee of the said notices of allotment respecting both the 1961 and 1962 allotments. (Comm. Exhibits 2-17, Forms MQ-53, dated 5-4-62.)

45. On May 8, 1962, the Culberson County ASCS Committee issued notices of penalties aggregating approximately $58,371.87 which penalties were calculated on the basis of the estimated normal yield of all cotton produced on the disputed acreage during 1961. Such notices were withdrawn on May 11, 1962, and later reissued on June 1, 1962, and July 16, 1962. (Tr. 194-195, 197, 199; Comm. Exhibits 2-17, Forms MQ-93; Applicants' Exhibit 20.)

46. Mr. Chandler filed timely appeals from the said notices of penalty on or about June 12, 1962, and July 25,

1962. (Comm. Exhibits 2-17, Forms MQ-53, dated June 12 and July 25, 1962.)

47. On May 8, 1962, the Culberson County ASCS Committee issued to Mr. Chandler Forms MQ-92, Determination of Farm Normal Yield for Farm with Excess Upland Cotton Acreage and Estimate of Production for Current Crop, for each of the farms purchased by the displaced farmers. Each of these farms established 856 pounds of cotton per acre as the normal yield. (Comm. Exhibits 2-17, Forms MQ-92, dated 5-8-62.)

48. On June 1, 1962, Mr. W. Lewis David informed Mr. Chandler that, upon review of the Texas State ASCS Committee and the Department of Agriculture it had been determined that the Seller's Certifications filed by Mr. Chandler did not establish bona fide sales of land and were therefore disapproved. (Applicants' Exhibit 2; Tr. 196-198.)

49. On June 30, 1962, Mr. Chandler timely filed Forms MQ-98, Farm Operator's Report of Upland Cotton Production, for all farms purchased by the displaced farmers and operated by him, except Farm No. 142, owned by Paul Kenney, as to which farm the actual yield exceeded the normal yield set forth on the MQ-93 penalty notice for that farm. In the case of all of the other Culberson County farms owned by the displaced farmers, the MQ-98 Report established by documentation a lower actual yield than the normal yield arbitrarily established in the MQ-93 penalty notice. (Comm. Exhibits 2-17, MQ-98 dated 6-30-62.)

50. On July 4, 1962, hearing was held before the Culberson County ASCS Committee, in connection with the MQ-98 forms filed by Mr. Chandler, to determine whether downward adjustment of the 1961 farm marketing excess established by the MQ-93 penalty notices should be made. Mr. Chandler presented evidence that the 1961 crop on the Oklahoma farms was below normal yield due to late planting, the fact that this was an initial crop on this land, and.

due to an early frost. Mr. Chandler presented documentary evidence in the form of gin tickets and sale documents to establish actual production. (Tr. 199-201.)

51. On July 6, 1962, the Committee determined that Mr. Chandler had not satisfactorily established the actual 1961 production on the Oklahoma farms and refused to make the requested downward adjustment. (Tr. 199-201.)

52. On the basis of uncontested evidence in this hearing, the following actual yields are found for those farms not exceeding the normal yield:

Farm Number	Actual Yield In Pounds
127	30,192
128	21,936
129	6,193
130	19,148
131	2,634
132	5,348
133	6,789
134	4,894
135	12,844
136	36,087
138	3,682
139	8,205
140	4,611
141	3,637
143	7,397

(Tr. 412-413.)

53. On July 16, 1962, a third series of Forms MQ-93 were prepared by the Culberson County ASCS Committee and mailed to Mr. Chandler. These notices provided the same zero allotment and marketing quota and imposed the same penalties based upon normal yields for the 1961 crop on the Oklahoma farms as the previous MQ-93 Forms. (Comm. Exhibits 2-17, Forms MQ-93, dated July 16, 1962.)

54. On July 17, Mr. Chandler filed timely forms MQ-53, Applications for Review of the determination of July 16. (Comm. Exhibits 2-17, Forms MQ-53, dated July 17, 1962.)

55. Relying upon the 1961 acreage allotments and marketing quotas and statements made by various officials of the Department of Agriculture and believing in good faith that 1962 allotments and marketing quotas would issue, Fred Chandler, Sr., and Fred Chandler, Jr., planted the disputed acreage portion of the reconstituted farm to cotton in the spring of 1962. (Tr. 207-211.)

56. On August 17, 1962, the Culberson County ASCS Committee issued a Notice of Acreage as to the 1962 crop on the reconstituted farm. Said notice informed Fred Chandler, Sr., and Fred Chandler, Jr., that all cotton produced on the disputed acreage portion of the reconstituted farm for 1962 was in excess of the allotment for said reconstituted farm and that, unless such excess was destroyed by September 3, 1962, such excess cotton would be penalized and all cotton produced on said reconstituted farm would be ineligible for price support loans. (Comm. Exhibits 2-17, Form CS-590 dated August 17, 1962.)

57. On August 30, 1962, Mr. Chandler filed timely appeals from said Notice of Acreage of August 17, 1962. (Comm. Exhibits 2-17, Form MQ-53 dated August 30, 1962.)

Conclusions

1.

The displaced farmers were entitled, under the provisions of Section 378 of the Agricultural Adjustment Act, to have their cotton allotments transferred from their Oklahoma lands, taken by the Bureau of Reclamation pursuant to the power of eminent domain, to other land owned by them.

2.

Following the transfer of the cotton allotments by the Culberson County ASCS Committee and the subsequent approval of such action by the Texas State ASCS office the allotments thereafter could be cancelled only upon a finding that the transfer was secured by misrepresentation knowingly made of a fact or a circumstance material to the issue of ownership, or material to the issue of whether there was a side agreement or a scheme or device to transfer the allotment for the benefit of another which effect prevented the transfer of ownership of the land acquired by the displaced owners.

3.

The facts and circumstances presented in the evidence do not establish that there was misrepresentation knowingly made by or on behalf of the applicants material to the issue of ownership or material to the issue of whether there was a side agreement or a scheme or device to transfer the allotment for the benefit of another which in effect prevented the transfer of ownership.

DETERMINATION

The above entitled cause having come on to be heard before a duly constituted and appointed ASCS Review Committee, on the 12th, 13th and 14th days of September, 1962, at which time counsel for the respective parties were heard and evidence adduced and based upon the arguments so made and the evidence adduced the foregoing Findings of Fact and Conclusions were made and upon those Findings of Fact and Conclusions IT IS DETERMINED BY ME THAT:

1. The Culberson ASCS Committee, acting pursuant to the provisions of Section 378 of the Agricultural Adjustment Act, as amended, transferred the cotton allotments

of the displaced farmers listed below to the land owned by them and operated by Fred Chandler, Sr., and Fred Chandler, Jr., in Culberson County, Texas, and issued 1961 allotments on said land as set forth opposite their names, and the Texas ASCS office approved these transfers and the issuance of the allotments:

Name	1961 Allotment
J. R. Kenney	46.8
Vernon McLaughlin	43.8
Woodrow Gum	15.2
A. N. Easley	32.2
L. M. Stout	6.9
Cecil E. Brown	12.7
Jack V. Warner	16.8
Vernon Fletcher	15.2
A. H. Crawford	23.0
Hubert Kephart	78.4
Lewis E. Kenney	10.0
Jack H. Kenney	10.0
J. R. Kenney	10.0
W. S. Kenney	9.4
Paul Kenney	10.0
Vance Kenney	10.0

2. The cancellation of these 1961 allotments by the Culberson County ASCS Committee on April 27, 1962, and the issuance of zero allotments in lieu thereof was in error. Accordingly, the 1961 quotas and allotments originally issued are hereby reinstated and the penalties which have been assessed by notice of the Culberson County ASCS Committee dated July 1, 1962, and July 15, 1962, are hereby set aside.

3. Cotton allotments on this land for the year 1962 have been improperly withheld and should be issued immediately by the Culberson County ASCS Committee as a part of Reconstituted Farm 6504.